

§ 191.6

12 CFR Ch. I (1-1-23 Edition)

§ 191.6 Interpretations.

The OCC periodically will publish Interpretations under section 341 of the Garn-St Germain Depository Institutions Act of 1982, Public Law 97-320, 96 Stat. 1469, 1505-1507, in the FEDERAL REGISTER in response to written requests sent to the OCC.

PART 192—CONVERSIONS FROM MUTUAL TO STOCK FORM

Sec.

- 192.5 Purpose, prescribed forms, waiver.
- 192.7 Electronic filing.
- 192.8 Computation of time.
- 192.10 Forming a holding company upon conversion.
- 192.15 Forming a charitable organization upon conversion.
- 192.20 Acquiring another insured depository institution upon conversion.
- 192.25 Definitions.

Subpart A—Standard Conversions

PRIOR TO CONVERSION

- 192.100 Preparing for a conversion.
- 192.105 Information required in business plan.
- 192.110 Review of business plan by chief executive officer and board of directors.
- 192.115 Review of business plan by the appropriate Federal banking agency.
- 192.120 Confidentiality of conversion information.

PLAN OF CONVERSION

- 192.125 Adoption of plan of conversion by board of directors.
- 192.130 Information required in plan of conversion.
- 192.135 Notifying members of adopted plan of conversion.
- 192.140 Amendments to plan of conversion.

FILING REQUIREMENTS

- 192.150 Information required in an application for conversion.
- 192.155 Filing an application for conversion.
- 192.160 Request for confidential treatment.
- 192.165 Amendments to an application for conversion.

NOTICE OF FILING OF APPLICATION AND COMMENT PROCESS

- 192.180 Public notice of an application for conversion.
- 192.185 Public comment on application for conversion.

AGENCY REVIEW OF THE APPLICATION FOR CONVERSION

- 192.200 Review, approval, or denial of application for conversion.
- 192.205 Court review of final action on application for conversion.

VOTE BY MEMBERS

- 192.225 Approval of plan of conversion by members.
- 192.230 Members' voting eligibility.
- 192.235 Notice of members' meeting.
- 192.240 Submission of documents to the appropriate Federal banking agency after the members' meeting.

PROXY SOLICITATION

- 192.250 Compliance with proxy solicitation provisions.
- 192.255 Form of proxy requirements.
- 192.260 Previously executed proxies.
- 192.265 Proxies executed under this part.
- 192.270 Proxy statement requirements.
- 192.275 Filing revised proxy materials.
- 192.280 Mailing member's proxy solicitation materials.
- 192.285 Prohibited solicitations.
- 192.290 Remedial measures for prohibited solicitations.
- 192.295 Re-solicitation of proxies.

OFFERING CIRCULAR

- 192.300 Offering circular requirements.
- 192.305 Distribution of offering circular.
- 192.310 Filing a post-effective amendment to an offering circular.

OFFERS AND SALES OF STOCK

- 192.320 Order of priority to purchase conversion shares.
- 192.325 Timing of offer to sell conversion shares.
- 192.330 Pricing of conversion shares.
- 192.335 Procedures for the sale of conversion shares.
- 192.340 Prohibited sales practices.
- 192.345 Permissible forms of subscriber payment.
- 192.350 Interest on payments for conversion shares.
- 192.355 Subscription rights for eligible account holders and supplemental eligible account holders.
- 192.360 Officers, directors, and associates as eligible account holders.
- 192.365 Purchase of conversion shares by other voting members.
- 192.370 Limits on aggregate purchases by officers, directors, and associates.
- 192.375 Allocation of oversubscribed conversion shares.
- 192.380 Purchase of conversion shares by employee stock ownership plan.
- 192.385 Purchase limitations.
- 192.390 Community offering of conversion shares.

Comptroller of the Currency, Treasury

§ 192.5

192.395 Other conditions for community and public offerings.

COMPLETION OF THE OFFERING

192.400 Time period for completion of sale of stock.

192.405 Extension of the offering period.

COMPLETION OF THE CONVERSION

192.420 Time period for completion of the conversion.

192.425 Termination of conversion.

192.430 Charter amendments.

192.435 Corporate existence after conversion.

192.440 Stockholder voting rights after conversion.

192.445 Savings account holder's account after conversion.

LIQUIDATION ACCOUNT

192.450 Liquidation accounts.

192.455 Initial balance of liquidation account.

192.460 Initial balance of liquidation sub-account.

192.465 Retention of voting rights based on liquidation sub-accounts.

192.470 Required adjustments to liquidation sub-accounts.

192.475 Definition of liquidation.

192.480 Effect of liquidation account on net worth.

192.485 Required liquidation account provision in new Federal charter.

POST-CONVERSION

192.500 Permissible management stock benefit plans after conversion.

192.505 Restrictions on the trading of shares by directors, officers, and associates.

192.510 Repurchase of shares after conversion.

192.515 Information to be filed with Federal banking agency prior to repurchase of shares.

192.520 Declaring and paying dividends after the conversion.

192.525 Restrictions on acquisition of shares after conversion.

192.530 Other post-conversion requirements.

CONTRIBUTIONS TO CHARITABLE ORGANIZATIONS

192.550 Donating conversion shares or conversion proceeds to a charitable organization.

192.555 Member approval of charitable contributions.

192.560 Limitations on charitable contributions.

192.565 Contents of organizational documents of charitable organization.

192.570 Conflicts of interest among directors.

192.575 Other requirements for charitable organizations.

Subpart B—Voluntary Supervisory Conversions

192.600 Voluntary supervisory conversions.

192.605 Conducting a voluntary supervisory conversion.

192.610 Member rights in a voluntary supervisory conversion.

ELIGIBILITY

192.625 Eligibility for a voluntary supervisory conversion.

192.630 Eligibility of State-chartered savings bank for voluntary supervisory conversion.

PLAN OF SUPERVISORY CONVERSION

192.650 Contents of plan of voluntary supervisory conversion.

VOLUNTARY SUPERVISORY CONVERSION APPLICATION

192.660 Contents of voluntary supervisory conversion application.

APPROPRIATE FEDERAL BANKING AGENCY REVIEW OF THE VOLUNTARY SUPERVISORY CONVERSION APPLICATION

192.670 Approval of voluntary supervisory conversion application.

192.675 Conditions imposed upon approval of voluntary supervisory conversion application.

OFFERS AND SALES OF STOCK

192.680 Offer and sale of shares in a voluntary supervisory conversion.

POST-CONVERSION

192.690 Restrictions on acquisition of additional shares after voluntary supervisory conversion.

AUTHORITY: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901 *et seq.*, 5412(b)(2)(B); 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

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§ 192.5 Purpose, prescribed forms, waiver.

(a) *General.* This part governs how a savings association may convert from the mutual to the stock form of ownership. Subpart A of this part governs standard mutual-to-stock conversions. Subpart B of this part governs voluntary supervisory mutual-to-stock conversions. This part supersedes all

§ 192.7

inconsistent charter and bylaw provisions of Federal savings associations converting to stock form.

(b) *Prescribed forms.* A savings association must use the forms prescribed under this part and part 16 and provide such information as the appropriate Federal banking agency may require under the forms and by regulation. The forms required under this part include: Form AC (Application for Conversion); Form PS (Proxy Statement); Form OC (Offering Circular); Form OF (Order Form); and the applicable form for a registration statement under 12 CFR 16.15. Forms AC, PS, OC, and OF are available on the website of the Office of the Comptroller of the Currency (OCC) at <http://www.occ.gov>.

(c) *Waivers.* The appropriate Federal banking agency may waive any requirement of this part or a provision in any prescribed form. To obtain a waiver, a savings association must file a written request with the appropriate Federal banking agency that:

(1) Specifies the requirement(s) or provision(s) the savings association wants the appropriate Federal banking agency to waive;

(2) Demonstrates that the waiver is equitable; is not detrimental to the savings association, its account holders, or other savings associations; and is not contrary to the public interest; and

(3) Includes an opinion of counsel demonstrating that applicable law does not conflict with the waiver of the requirement or provision.

(d) *Financial statements.* The form and content of financial statements and related financial data in a filing under this part must be prepared and presented in accordance with U. S. generally accepted accounting principles and other applicable accounting guidance and requirements as specified by the OCC in the forms required under paragraph (b) of this section.

§ 192.7 Electronic filing.

For Federal savings associations, the OCC encourages the electronic filing of all applications, notices, or other documents required by this part through <http://www.banknet.gov/>. The Comptroller's Licensing Manual describes the OCC's electronic filing procedures.

12 CFR Ch. I (1–1–23 Edition)

§ 192.8 Computation of time.

In computing the period of days, the OCC excludes the day of the act or event (*e.g.*, the date an application is received by the OCC) from when the period begins to run. When the last day of a time period is a Saturday, Sunday, or Federal holiday, the time period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday.

§ 192.10 Forming a holding company upon conversion.

A savings association may convert to the stock form of ownership as part of a transaction where the savings association organizes a holding company to acquire all of the savings association's shares upon their issuance. In this transaction, the savings association's holding company will offer rights to purchase its shares instead of the savings association's shares. Regulations of the Board of Governors of the Federal Reserve System address holding company application requirements.

§ 192.15 Forming a charitable organization upon conversion.

When a savings association converts to the stock form, it may form a charitable organization. A savings association's contributions to the charitable organization are governed by the requirements of §§ 192.550 through 192.575.

§ 192.20 Acquiring another insured depository institution upon conversion.

When a savings association converts to stock form, it may acquire for cash or stock another insured depository institution that is already in the stock form of ownership.

§ 192.25 Definitions.

The following definitions apply to this part and the forms prescribed under this part:

Acting in concert has the same meaning as in 12 CFR 5.50(d)(2). The rebuttable presumptions of 12 CFR 5.50(f)(2), other than 12 CFR 5.50(f)(2)(ii)(A) and (B), apply to the share purchase limitations at §§ 192.355 through 192.395.

Affiliate of, or a person *affiliated with*, a specified person is a person that directly or indirectly, through one or

Comptroller of the Currency, Treasury

§ 192.25

more intermediaries, controls, is controlled by, or is under common control with the specified person.

Appropriate Federal banking agency means appropriate Federal banking agency as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

Associate of a person is:

(1) A corporation or organization (other than a savings association or its majority-owned subsidiaries), if the person is a senior officer or partner, or beneficially owns, directly or indirectly, 10 percent or more of any class of equity securities of the corporation or organization.

(2) A trust or other estate, if the person has a substantial beneficial interest in the trust or estate or is a trustee or fiduciary of the trust or estate. For purposes of §§192.370 through 192.395 and 192.505, a person who has a substantial beneficial interest in a savings association's tax-qualified or non-tax-qualified employee stock benefit plan, or who is a trustee or a fiduciary of the plan, is not an associate of the plan. For the purposes of §192.370, a savings association's tax-qualified employee stock benefit plan is not an associate of a person.

(3) Any person who is related by blood or marriage to such person and:

(i) Who lives in the same home as the person; or

(ii) Who is the savings association's director or senior officer, or a director or senior officer of the savings association's holding company or its subsidiary.

Association members or *members* are persons who, under applicable law, are eligible to vote at the meeting on conversion.

Community offering means the offer to sell to the members of the general public in the savings association's community the securities not subscribed for in the subscription offering. The community offering may occur concurrently with the subscription offering and any syndicated community offering, or upon conclusion of the subscription offering.

Control (including *controlling*, *controlled by*, and *under common control with*) means the direct or indirect power to direct or exercise a control-

ling influence over the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise as described in 12 CFR 5.50.

Demand accounts means non-interest-bearing demand deposits that are subject to check or to withdrawal or transfer on negotiable or transferable order to the savings association and that are permitted to be issued by statute, regulation, or otherwise and are payable on demand.

Eligibility record date is the date for determining eligible account holders. The eligibility record date must be at least one year before the date a savings association's board of directors adopts the plan of conversion.

Eligible account holders are any persons holding qualifying deposits on the eligibility record date.

Federal savings association means a Federal savings association or Federal savings bank chartered under section 5 of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1464).

IRS is the Internal Revenue Service.

Local community includes:

(1) Every county, parish, or similar governmental subdivision in which a savings association has a home or branch office;

(2) Each county's, parish's, or subdivision's metropolitan statistical area;

(3) All zip code areas in a savings association's Community Reinvestment Act assessment area; and

(4) Any other area or category that a savings association sets out in its plan of conversion, as approved by the appropriate Federal banking agency.

Offer, *offer to sell*, or *offer for sale* is an attempt or offer to dispose of, or a solicitation of an offer to buy, a security or interest in a security for value. Preliminary negotiations or agreements with an underwriter, or among underwriters who are or will be in privity of contract with a savings association, are not offers, offers to sell, or offers for sale.

Offering circular means the securities offering materials for the conversion.

Person is an individual, a corporation, a partnership, an association, a

§ 192.25

12 CFR Ch. I (1-1-23 Edition)

joint-stock company, a limited liability company, a trust, an unincorporated organization, or a government or political subdivision of a government.

Proxy soliciting material includes a proxy statement, form of proxy, or other written or oral communication regarding the conversion.

Purchase or buy includes every contract to acquire a security or interest in a security for value.

Qualifying deposit is the total balance in an account holder's savings accounts at the close of business on the eligibility or supplemental eligibility record date. A savings association's plan of conversion may provide that only savings accounts with total deposit balances of \$50 or more will qualify.

Sale or sell includes every contract to dispose of a security or interest in a security for value. An exchange of securities in a merger or acquisition approved by the appropriate Federal banking agency is not a sale.

Savings account means any withdrawable account, including a demand account, except this term does not mean a tax and loan account, a note account, a United States Treasury general account, or a United States Treasury time deposit-open account.

Savings association means a savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)).

Solicitation and solicit is a request for a proxy, whether or not accompanied by or included in a form of proxy; a request to execute, not execute, or revoke a proxy; or the furnishing of a form of proxy or other communication reasonably calculated to cause a savings association's members to procure, withhold, or revoke a proxy. Solicitation or solicit does not include providing a form of proxy at the unsolicited request of a member, the acts required to mail communications for members, or ministerial acts performed on behalf of a person soliciting a proxy.

State means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands,

the Virgin Islands, and the Northern Mariana Islands.

State savings association means a State savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3)).

Subscription offering is the offering of shares through nontransferable subscription rights to:

- (1) Eligible account holders under §192.355;
- (2) Tax-qualified employee stock ownership plans under §192.380;
- (3) Supplemental eligible account holders under §192.355; and
- (4) Other voting members under §192.365.

Supplemental eligibility record date is the date for determining supplemental eligible account holders. The supplemental eligibility record date is the last day of the calendar quarter before the appropriate Federal banking agency approves a savings association's conversion and will only occur if such agency has not approved such conversion within 15 months after the eligibility record date.

Supplemental eligible account holders are any persons, except a savings association's officers, directors, and their associates, holding qualifying deposits on the supplemental eligibility record date.

Tax-qualified employee stock benefit plan is any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan, or other plan, and a related trust, that is qualified under section 401 of the Internal Revenue Code (26 U.S.C. 401).

Underwriter is any person who purchases any securities from a savings association with a view to distributing the securities, offers or sells securities for a savings association in connection with the securities' distribution, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking. Underwriter does not include a person whose interest is limited to a usual and customary distributor's or seller's commission from an underwriter or dealer.

Voluntary supervisory conversion is a mutual to stock conversion for a savings association that is unable to complete a standard mutual to stock conversion under part 192, subpart A, and that meets the eligibility requirements of § 192.625.

Subpart A—Standard Conversions

PRIOR TO CONVERSION

§ 192.100 Preparing for a conversion.

(a) *Meeting with appropriate Federal banking agency prior to passing plan.* A savings association's board, or a subcommittee of its board, must meet, in person or electronically, with the appropriate Federal banking agency before the savings association passes its plan of conversion. At this meeting the savings association must provide the appropriate Federal banking agency with a written strategic plan that outlines the objectives of the proposed conversion and the intended use of the conversion proceeds.

(b) *Consultation with appropriate Federal banking agency before filing application.* A savings association also should consult with the appropriate Federal banking agency before filing its application for conversion. The appropriate Federal banking agency will discuss the information that the savings association must include in the application for conversion, general issues that it may confront in the conversion process, and any other pertinent issues.

§ 192.105 Information required in business plan.

(a) *Minimum requirements.* Prior to filing an application for conversion, a savings association must adopt a business plan reflecting its intended plans for deployment of the proposed conversion proceeds. The savings association's business plan is required, under § 192.150, to be included in its application for conversion. At a minimum, the business plan must address:

(1) The savings association's projected operations and activities for three years following the conversion. These projections must include how the savings association will accomplish the following by the final year of the business plan:

(i) Deploy the conversion proceeds at the converted savings association (and holding company, if applicable);

(ii) What opportunities are available to reasonably achieve its planned deployment of conversion proceeds in the proposed market areas; and

(iii) How the deployment will provide a reasonable return on investment commensurate with investment risk, investor expectations, and industry norms. The savings association must include three years of projected financial statements. The business plan must provide that the converted savings association must retain at least 50 percent of the net conversion proceeds. The appropriate Federal banking agency may require that a larger percentage of proceeds remain in the institution.

(2) The savings association's plan for deploying conversion proceeds to meet credit and lending needs in the proposed market areas. The appropriate Federal banking agencies strongly discourage business plans that provide for a substantial investment in mortgage securities or other securities, except as an interim measure to facilitate orderly, prudent deployment of proceeds during the three years following the conversion or as part of a properly managed leverage strategy.

(3) The risks associated with the savings association's plan for deployment of conversion proceeds, and the effect of this plan on management resources, staffing, and facilities.

(4) The expertise of the savings association's management and board of directors, or plans for adequate staffing and controls to prudently manage the growth, expansion, new investment, and other operations and activities proposed in the business plan.

(b) *Prohibited information.* The savings association may not project returns of capital or special dividends in any part of the business plan. A newly converted company may not plan on stock repurchases in the first year of the business plan.

§ 192.110 Review of business plan by chief executive officer and board of directors.

(a) *Review and approval.* A savings association's chief executive officer and

§ 192.115

members of the board of directors must review, and at least two-thirds of the board of directors must approve, the business plan.

(b) *Certification.* A savings association's chief executive officer and at least two-thirds of the board of directors must certify that the business plan accurately reflects the intended plans for deployment of conversion proceeds, and that any new initiatives reflected in the business plan are reasonably achievable. The savings association must submit these certifications with its business plan, as part of its application for conversion under §192.150.

§ 192.115 Review of business plan by the appropriate Federal banking agency.

(a) *Agency review.* The appropriate Federal banking agency will review the savings association's business plan to determine that it demonstrates a safe and sound deployment of conversion proceeds, as part of its review of the application for conversion. In making its determination, the appropriate Federal banking agency will consider how the savings association has addressed the applicable factors of §192.105. No single factor will be determinative.

(b) *Filing of business plan.* A savings association must file its business plan as a separate confidential exhibit to the Form AC with the appropriate OCC licensing office if it is a Federal savings association, or with the appropriate Federal Deposit Insurance Corporation (FDIC) region if it is a State savings association. The appropriate Federal banking agency may request additional information, if necessary, to support its determination under paragraph (a) of this section.

(c) *Operation within business plan.* If the appropriate Federal banking agency approves a savings association's application for conversion and the conversion is completed, the savings association must operate within the parameters of its business plan. The savings association must obtain the prior written approval of the appropriate Federal banking agency for any material deviations from its business plan.

12 CFR Ch. I (1-1-23 Edition)

§ 192.120 Confidentiality of conversion information.

(a) *Permitted disclosure.* A savings association may discuss information about its conversion with individuals that the savings association authorizes to prepare documents for its conversion.

(b) *Confidential information.* Except as permitted under paragraph (a) of this section, a savings association must keep all information about its conversion confidential until its board of directors adopts the plan of conversion.

(c) *Violations of confidentiality.* If a savings association violates this section, the appropriate Federal banking agency may require the savings association to take remedial action. For example, the appropriate Federal banking agency may require the savings association to take any or all of the following actions:

- (1) Publicly announce that the savings association is considering a conversion;
- (2) Set an eligibility record date acceptable to the appropriate Federal banking agency;
- (3) Limit the subscription rights of any person who violates or aids a violation of this section; or
- (4) Any other action to assure that the conversion is fair and equitable.

PLAN OF CONVERSION

§ 192.125 Adoption of plan of conversion by board of directors.

Prior to filing an application for conversion, a savings association's board of directors must adopt a plan of conversion that conforms to §§192.320 through 192.485 and 192.505. The savings association's board of directors must adopt the plan by at least a two-thirds vote. Pursuant to §192.150, the savings association must include the plan of conversion in the application for conversion.

§ 192.130 Information required in plan of conversion.

A savings association must include the information included in §§192.320 through 192.485 and 192.505 in its plan of conversion. The appropriate Federal banking agency may require the savings association to delete or revise any

provision in its plan of conversion if it determines the provision is inequitable; is detrimental to the savings association, its account holders, or other savings associations; or is contrary to public interest.

§ 192.135 Notifying members of adopted plan of conversion.

(a) *Notice.* A savings association must promptly notify its members that the board of directors adopted a plan of conversion and that a copy of the plan is available for the members' inspection in the savings association's home office and in its branch offices. The savings association must provide this notice by sending to each member a letter, through the mail or electronically if the member receives electronic communication, or by publishing a notice in the local newspaper in every local community where the savings association has an office. The savings association also may issue a press release and may make this notice available on its website. The appropriate Federal banking agency may require broader publication, if necessary, to ensure adequate notice to the savings association's members.

(b) *Contents of notice.* The savings association may include only the following statements and descriptions in the letter, notice, or press release.

(1) The savings association's board of directors adopted a proposed plan to convert from a mutual to a stock savings institution.

(2) The savings association will send its members a proxy statement with detailed information on the proposed conversion before the savings association convenes a members' meeting to vote on the conversion.

(3) The savings association's members will have an opportunity to approve or disapprove the proposed conversion at a meeting. A majority of the eligible votes must approve the conversion.

(4) The savings association will not vote existing proxies to approve or disapprove the conversion. The savings association will solicit new proxies for voting on the proposed conversion.

(5) The appropriate Federal banking agency, and in the case of a State-chartered savings association, the appro-

priate State regulator, must approve the conversion before the conversion will be effective. The savings association's members will have an opportunity to file written comments, including objections and materials supporting the objections, with the appropriate Federal banking agency.

(6) The IRS must issue a favorable tax ruling, or a tax expert must issue an appropriate tax opinion, on the tax consequences of the savings association's conversion before the appropriate Federal banking agency will approve the conversion. The ruling or opinion must indicate the conversion will be a tax-free reorganization.

(7) The appropriate Federal banking agency, and in the case of a State-chartered savings association, the appropriate State regulator, might not approve the conversion, and the IRS or a tax expert might not issue a favorable tax ruling or tax opinion.

(8) Savings account holders will continue to hold accounts in the converted savings association with the same dollar amounts, rates of return, and general terms as existing deposits. The FDIC will continue to insure the accounts.

(9) The savings association's conversion will not affect borrowers' loans, including the amount, rate, maturity, security, and other contractual terms.

(10) The savings association's business of accepting deposits and making loans will continue without interruption.

(11) The savings association's current management and staff will continue to conduct current services for depositors and borrowers under current policies and in existing offices.

(12) The savings association may substantively amend its proposed plan of conversion before the members' meeting.

(13) The savings association may terminate the proposed conversion.

(14) After the appropriate Federal banking agency, and in the case of a State-chartered savings association, the appropriate State regulator, approves the proposed conversion, the savings association will send proxy materials providing additional information. After the savings association sends proxy materials, members may

§ 192.140

12 CFR Ch. I (1–1–23 Edition)

telephone or write to the savings association with additional questions.

(15) The proposed record date for determining the eligible account holders who are entitled to receive subscription rights to purchase the savings association's shares.

(16) A brief description of the circumstances under which supplemental eligible account holders will receive subscription rights to purchase the savings association's shares.

(17) A brief description of how voting members may participate in the conversion.

(18) A brief description of how directors, officers, and employees will participate in the conversion.

(19) A brief description of the proposed plan of conversion.

(20) The par value (if any) and approximate number of shares the savings association will issue and sell in the conversion.

(c) *Other requirements.* (1) The savings association may not solicit proxies, provide financial statements, describe the benefits of conversion, or estimate the value of its shares upon conversion in the letter, notice, or press release.

(2) If the savings association responds to inquiries about the conversion, it may address only the matters listed in paragraph (b) of this section.

§ 192.140 Amendments to plan of conversion.

A savings association may amend its plan of conversion before it solicits proxies. After the savings association solicits proxies, it may amend the plan of conversion only if the appropriate Federal banking agency concurs.

FILING REQUIREMENTS

§ 192.150 Information required in an application for conversion.

(a) *Required information.* A savings association's application for conversion must include all of the following information.

(1) The savings association's plan of conversion.

(2) Pricing materials meeting the requirements of § 192.200(b).

(3) Proxy soliciting materials under § 192.270, including:

(i) A preliminary proxy statement with signed financial statements;

(ii) A form of proxy meeting the requirements of § 192.255; and

(iii) Any additional proxy soliciting materials, including press releases, personal solicitation instructions, radio or television scripts that the savings association plans to use or furnish to its members, and a legal opinion indicating that any marketing materials comply with all applicable securities laws.

(4) An offering circular described in § 192.300.

(5) The documents and information required by Form AC. The savings association may obtain Form AC from the appropriate Federal banking agency.

(6) Where indicated, written consents, signed and dated, of any accountant, attorney, investment banker, appraiser, or other professional who prepared, reviewed, passed upon, or certified any statement, report, or valuation for use. *See* Form AC, instructions.

(7) The savings association's business plan, submitted as a separately bound, confidential exhibit. *See* § 192.160.

(8) Any additional information that the appropriate Federal banking agency requests.

(b) *Rejection of filing.* The appropriate Federal banking agency will not accept for filing, and may return, any application for conversion that is executed improperly, materially deficient, substantially incomplete, or that provides for unreasonable conversion expenses.

§ 192.155 Filing an application for conversion.

A Federal savings association must file Form AC with the appropriate OCC licensing office. A State savings association must file its application with the appropriate FDIC region.

§ 192.160 Request for confidential treatment.

(a) *In general.* The appropriate Federal banking agency makes all filings under this part available to the public, but may keep portions of the application for conversion confidential under paragraph (b) of this section.

(b) *Requests for confidential treatment.* A savings association may request that

Comptroller of the Currency, Treasury

§ 192.200

the appropriate Federal banking agency keep portions of the savings association's application confidential. To make this request, the savings association must clearly designate as "confidential" any portion of its application for conversion that it deems confidential. The savings association must provide a written statement specifying the grounds supporting its request for confidentiality. The appropriate Federal banking agency will not treat as confidential the portion of a savings association's application describing how it plans to meet Community Reinvestment Act (CRA) objectives. The CRA portion of a savings association's application may not incorporate by reference information contained in the confidential portion of the application.

(c) *Determination of confidential treatment.* The appropriate Federal banking agency will determine whether confidential information must be made available to the public under 5 U.S.C. 552 and 12 CFR part 4 or 12 CFR part 309, as appropriate. The appropriate Federal banking agency will advise the savings association before it makes information designated as "confidential" available to the public.

§ 192.165 Amendments to an application for conversion.

To amend its application for conversion, a savings association must:

- (a) File an amendment with an appropriate facing sheet;
- (b) Number each amendment consecutively;
- (c) Respond to all issues raised by the appropriate Federal banking agency; and
- (d) Demonstrate that the amendment conforms to all applicable regulations.

NOTICE OF FILING OF APPLICATION AND COMMENT PROCESS

§ 192.180 Public notice of an application for conversion.

(a) *In general.* A Federal savings association must publish a public notice of the application in accordance with the procedures in 12 CFR 5.8. The Federal savings association must simultaneously prominently post the notice in its home office and all branch offices

and may also make this notice available on its website.

(b) *Additional notice.* If the appropriate Federal banking agency does not accept a savings association's application for conversion under § 192.200 and requires the savings association to file a new application, the savings association must publish and post a new notice and allow an additional 30 calendar days for comment.

§ 192.185 Public comment on application for conversion.

Commenters may submit comments on a Federal savings association's application in accordance with the procedures in 12 CFR 5.10.

AGENCY REVIEW OF THE APPLICATION FOR CONVERSION

§ 192.200 Review, approval, or denial of application for conversion.

(a) *Standards for review of application.* The appropriate Federal banking agency may approve an application for conversion only if:

- (1) The conversion complies with this part;
- (2) The savings association will meet its regulatory capital requirements under 12 CFR part 3 or part 324, as applicable, after the conversion; and
- (3) The conversion will not result in a taxable reorganization under the Internal Revenue Code of 1986, as amended.

(b) *Standards for review of appraisal.* The appropriate Federal banking agency will review the appraisal required by § 192.150(a)(2) in determining whether to approve the application. The appropriate Federal banking agency will review the appraisal under the following requirements.

- (1) Independent persons experienced and expert in corporate appraisal, and acceptable to the appropriate Federal banking agency, must prepare the appraisal report.
- (2) An affiliate of the appraiser may serve as an underwriter or selling agent, if the savings association ensures that the appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or affect the appraisal.

§ 192.205

12 CFR Ch. I (1-1-23 Edition)

(3) The appraiser may not receive any fee in connection with the conversion other than for appraisal services.

(4) The appraisal report must include a complete and detailed description of the elements of the appraisal, a justification for the appraisal methodology, and sufficient support for the conclusions.

(5) If the appraisal is based on a capitalization of the savings association's pro forma income, it must indicate the basis for determining the income to be derived from the sale of shares, and demonstrate that the earnings multiple used is appropriate, including future earnings growth assumptions.

(6) If the appraisal is based on a comparison of the savings association's shares with outstanding shares of existing stock associations, the existing stock associations must be reasonably comparable in size, market area, competitive conditions, risk profile, profit history, and expected future earnings.

(7) The appropriate Federal banking agency may decline to process the application for conversion and deem it materially deficient or substantially incomplete if the initial appraisal report is materially deficient or substantially incomplete.

(8) A savings association may not represent or imply that the appropriate Federal banking agency approved the appraisal.

(c) *Compliance with the Community Reinvestment Act.* The appropriate Federal banking agency will review the savings association's compliance record under 12 CFR part 195 and its business plan to determine how the savings association will serve the convenience and needs of its communities after the conversion.

(1) Based on this review, the appropriate Federal banking agency may approve the application, deny the application, or approve the application on the condition that the savings association will improve its CRA performance or that the savings association will address the particular credit or lending needs of the communities that it will serve.

(2) The appropriate Federal banking agency may deny the application if the savings association's business plan does not demonstrate that its proposed use of conversion proceeds will help the

savings association to meet the credit and lending needs of the communities that it will serve.

(d) *Additional information.* The appropriate Federal banking agency may request that a savings association amend its application if further explanation is necessary, material is missing, or material needs correction.

(e) *Denial of application.* The appropriate Federal banking agency will deny an application if the application does not meet the requirements of this subpart, unless the appropriate Federal banking agency waives the requirement under § 192.5(c).

§ 192.205 Court review of final action on application for conversion.

(a) *In general.* Any person aggrieved by the appropriate Federal banking agency's final action on a savings association's application for conversion may ask the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or the U.S. Court of Appeals for the District of Columbia Circuit, to review the action under 12 U.S.C. 1464(i)(2)(B).

(b) *Filing procedures.* To obtain court review of the action, this statute requires the aggrieved person to file a written petition requesting that the court modify, terminate, or set aside the final appropriate Federal banking agency action. The aggrieved person must file the petition with the court within the later of 30 calendar days after the appropriate Federal agency publishes notice of its final action in the FEDERAL REGISTER or 30 calendar days after the savings association mails the proxy statement to its members under § 192.235.

VOTE BY MEMBERS

§ 192.225 Approval of plan of conversion by members.

(a) *In general.* After the appropriate Federal banking agency approves a plan of conversion, the savings association must submit the plan of conversion to its members for approval. The savings association must obtain this approval at a meeting of its members, which may be a special or annual meeting, unless the savings association is

Comptroller of the Currency, Treasury

§ 192.250

State-chartered and State law requires approval via an annual meeting.

(b) *Approval.* The savings association's members must approve the plan of conversion by a majority of the total outstanding votes, unless the savings association is State-chartered and State law prescribes a higher percentage.

(c) *Voting method.* Savings association members may vote in person or by proxy.

(d) *Notification to non-voting members.* The savings association may notify eligible account holders or supplemental eligible account holders who are not voting members of its proposed conversion. The savings association may include only the information in §192.135 in its notice.

§ 192.230 Members' voting eligibility.

A savings association determines members' eligibility to vote by setting a voting record date. The savings association must set a voting record date that is not more than 60 calendar days nor less than 20 calendar days before its meeting, unless the savings association is State-chartered and State law requires a different voting record date.

§ 192.235 Notice of members' meeting.

(a) *In general.* A savings association must notify its members of the meeting to consider its conversion by sending the members a proxy statement cleared by the appropriate Federal banking agency.

(b) *Timing of notice.* The savings association must notify its members 20 to 45 calendar days before the meeting, unless the savings association is State-chartered and State law requires a different notice period.

(c) *Notice to beneficial account holders.* The savings association must also notify each beneficial holder of an account held in a fiduciary capacity:

(1) If the savings association is a Federal savings association, and the name of the beneficial holder is disclosed on the savings association's records; or

(2) If the savings association is a State-chartered savings association and the beneficial holder possesses voting rights under State law.

§ 192.240 Submission of documents to the appropriate Federal banking agency after the members' meeting.

(a) *Filings after members' meeting.* Promptly after the members' meeting, a savings association must file all of the following information with the appropriate OCC licensing office, if the savings association is Federally-chartered, and with the appropriate FDIC region if the savings association is State-chartered.

(1) A certified copy of each adopted resolution on the conversion.

(2) The total votes eligible to be cast.

(3) The total votes represented in person or by proxy.

(4) The total votes cast in favor of and against each matter.

(5) The percentage of votes necessary to approve each matter.

(6) An opinion of counsel that the savings association conducted the members' meeting in compliance with all applicable State or Federal laws and regulations.

(b) *Filing after conversion.* Promptly after completion of the conversion, the savings association must submit an opinion of counsel that it complied with all laws applicable to the conversion.

PROXY SOLICITATION

§ 192.250 Compliance with proxy solicitation provisions.

(a) *Savings association compliance.* A savings association must comply with these proxy solicitation provisions when it provides proxy solicitation material to members for the meeting to vote on the plan of conversion.

(b) *Member compliance.* Members of the savings association must comply with these proxy solicitation provisions when they provide proxy solicitation materials to members for the meeting to vote on the conversion, pursuant to §192.280, except where:

(1) The member solicits 50 people or fewer and does not solicit proxies on the savings association's behalf; or

(2) The member solicits proxies through newspaper advertisements after the savings association's board of directors adopts the plan of conversion. Any newspaper advertisements may include only the following information:

§ 192.255

- (i) The name of the savings association;
- (ii) The reason for the advertisement;
- (iii) The proposal or proposals to be voted upon;
- (iv) Where a member may obtain a copy of the proxy solicitation material; and
- (v) A request for the savings association's members to vote at the meeting.

§ 192.255 Form of proxy requirements.

The form of proxy must include all of the following:

- (a) A statement in bold face type stating that management is soliciting the proxy.
- (b) Blank spaces where the member must date and sign the proxy.
- (c) Clear and impartial identification of each matter or group of related matters that members will vote upon. The savings association must include any proposed charitable contribution as an item to be voted on separately.
- (d) The phrase "Revocable Proxy" in bold face type (at least 18 point).
- (e) A description of any charter or State law requirement that restricts or conditions votes by proxy.
- (f) An acknowledgment that the member received a proxy statement before he or she signed the form of proxy.
- (g) The date, time, and the place of the meeting, when available.
- (h) A way for the member to specify by ballot whether he or she approves or disapproves of each matter that members will vote upon.
- (i) A statement that management will vote the proxy in accordance with the member's specifications.
- (j) A statement in bold face type indicating how management will vote the proxy if the member does not specify a choice for a matter.

§ 192.260 Previously executed proxies.

A savings association may not use previously executed proxies for the plan of conversion vote. If members consider the plan of conversion at an annual meeting, the savings association may vote proxies obtained through other proxy solicitations only on matters not related to the plan of conversion.

12 CFR Ch. I (1-1-23 Edition)

§ 192.265 Proxies executed under this part.

A savings association may vote a proxy obtained under this part on matters that are incidental to the conduct of the meeting. The savings association may not vote a proxy obtained under this subpart at any meeting other than the meeting (or any adjournment of the meeting) to vote on the plan of conversion.

§ 192.270 Proxy statement requirements.

(a) *Content requirements.* A savings association must prepare its proxy statement in compliance with this part and Form PS.

(b) *Other requirements.* (1) The appropriate Federal banking agency will review the proxy solicitation material when it reviews the application for conversion and will clear the proxy solicitation material.

(2) The savings association must provide a cleared written proxy statement to its members before or at the same time it provides any other soliciting material. The savings association must mail cleared proxy solicitation material to its members within 10 calendar days after the appropriate Federal banking agency clears the solicitation.

§ 192.275 Filing revised proxy materials.

(a) *In general.* A savings association must file revised proxy solicitation materials as an amendment to its application for conversion. The proxy solicitation materials must be in the form in which it furnished the materials to its members.

(b) *Content of filing.* To revise its proxy solicitation materials, the savings association must file:

- (1) Its revised proxy materials as required by Form PS;
- (2) Its revised form of proxy, if applicable;
- (3) Any additional proxy solicitation material subject to § 192.270; and
- (4) A copy of the revised proxy solicitation materials marked to clearly indicate changes from the prior filing.

(c) *When to file.* The savings association must file no later than the date that it sends or gives the proxy solicitation material to its members. The

savings association must indicate the date that it will release the materials.

(d) *Material not required to be filed.* Unless requested by the appropriate Federal banking agency, the savings association does not have to file copies of replies to inquiries from its members or copies of communications that merely request members to sign and return proxy forms.

§ 192.280 Mailing member's proxy solicitation materials.

(a) *In general.* A savings association must mail the member's cleared proxy solicitation material if:

- (1) The savings association's board of directors adopted a plan of conversion;
- (2) A member requests in writing that the savings association mail the proxy solicitation material;
- (3) The appropriate Federal banking agency has cleared the member's proxy solicitation; and
- (4) The member agrees to defray the savings association's reasonable expenses.

(b) *Required information.* As soon as practicable after the savings association receives a request under paragraph (a) of this section, it must mail or otherwise furnish the following information to the member:

- (1) The approximate number of members that the savings association solicited or will solicit, or the approximate number of members of any group of account holders that the member designates; and
- (2) The estimated cost of mailing the proxy solicitation material for the member.

(c) *Timing.* The savings association must mail cleared proxy solicitation material to the designated members promptly after the member furnishes the materials, envelopes (or other containers), and postage (or payment for postage) to the savings association.

(d) *Content.* The savings association is not responsible for the content of a member's proxy solicitation material.

(e) *Sharing of proxy material.* A member may furnish other members its own proxy solicitation material, cleared by the appropriate Federal banking agency, subject to the rules in this section.

§ 192.285 Prohibited solicitations.

(a) *False or misleading statements.* (1) No one may use proxy solicitation material for the members' meeting if the material contains any statement which, considering the time and the circumstances of the statement:

- (i) Is false or misleading with respect to any material fact;
- (ii) Omits any material fact that is necessary to make the statements not false or misleading; or
- (iii) Omits any material fact that is necessary to correct a statement in an earlier communication that has become false or misleading.

(2) No one may represent or imply that the appropriate Federal banking agency determined that the proxy solicitation material is accurate, complete, not false or not misleading, or passed upon the merits of or approved any proposal.

(b) *Other prohibited solicitations.* No person may solicit:

- (1) An undated or post-dated proxy;
- (2) A proxy that states it will be dated after the date it is signed by a member;
- (3) A proxy that is not revocable at will by the member; or
- (4) A proxy that is part of another document or instrument.

§ 192.290 Remedial measures for prohibited solicitations.

(a) *In general.* If a solicitation violates § 192.285, the appropriate Federal banking agency may require remedial measures, including:

- (1) Correction of the violation by a retraction and a new solicitation;
- (2) Rescheduling the members' meeting; or
- (3) Any other actions necessary to ensure a fair vote.

(b) *Other action.* The appropriate Federal banking agency also may bring an enforcement action against the violator.

§ 192.295 Re-solicitation of proxies.

If a savings association amends its application for conversion, the appropriate Federal banking agency may require the savings association to re-solicit proxies for its members' meeting as a condition of approval of the amendment.

§ 192.300

12 CFR Ch. I (1–1–23 Edition)

OFFERING CIRCULAR

§ 192.300 Offering circular requirements.

(a) *Content and filing requirements.* A savings association must prepare and file its offering circular in compliance with this part, Form OC, and the applicable SEC registration statement form required under 12 CFR 16.15. A Federal savings association must file its offering circular with the appropriate OCC licensing office and a State savings association must file its offering circular with the appropriate FDIC region. If filing an amendment, the savings association also must comply with §§ 192.155 and 192.165.

(b) *Member approval.* A savings association must condition its stock offering upon member approval of its plan of conversion.

(c) *Agency review.* The appropriate Federal banking agency will review the offering circular and may comment on the included disclosures and financial statements. The appropriate Federal banking agency will not approve the adequacy or accuracy of the offering circular or the disclosures.

(d) *Revised filings.* A savings association must file any revised offering circular, final offering circular, and any post-effective amendment to the final offering circular in accordance with the procedures in §§ 192.155 and 192.165.

(e) *Request for effectiveness.* After a savings association satisfactorily addresses the appropriate Federal banking agency's comments, the savings association must request that the appropriate Federal banking agency declare the offering circular effective for a time period. The time period may not exceed the maximum time period for the completion of the sale of all of the savings association's shares under § 192.400.

§ 192.305 Distribution of offering circular.

(a) *Preliminary offering circular.* A savings association may distribute a preliminary offering circular at the same time as or after it mails the proxy statement to its members.

(b) *Early distribution prohibited.* A savings association may not distribute a final offering circular for stock issued

in the transaction until after the appropriate Federal banking agency declares the offering circular effective or the Securities and Exchange Commission declares the registration statement for the offering circular effective. The savings association must have the offering circular delivered in accordance with this part.

(c) *Effective offering circular.* A savings association must distribute a final offering circular for stock issued in the transaction to persons listed in its plan of conversion within 10 calendar days after the appropriate Federal banking agency declares the offering circular effective or the Securities and Exchange Commission declares the registration statement for the offering circular effective.

§ 192.310 Filing a post-effective amendment to an offering circular.

(a) *In general.* A savings association must file a post-effective amendment to the offering circular with the appropriate Federal banking agency or have its proposed stock holding company file a post-effective amendment to its registration statement for the offering circular with the Securities and Exchange Commission, when a material event or change of circumstances occurs.

(b) *Timing of delivery.* After the appropriate Federal banking agency or the Securities and Exchange Commission declares the post-effective amendment effective, the savings association must immediately have the amendment to the offering circular delivered to each person who subscribed for or ordered shares in the offering.

(c) *Content.* The post-effective amendment must indicate that each person may increase, decrease, or rescind their subscription or order.

(d) *Post-effective offering period.* The post-effective offering period must remain open no less than 10 calendar days nor more than 20 calendar days, unless the appropriate Federal banking agency approves a longer rescission period.

Comptroller of the Currency, Treasury

§ 192.340

OFFERS AND SALES OF STOCK

§ 192.320 Order of priority to purchase conversion shares.

A savings association must offer to sell its shares in the following order:

- (a) Eligible account holders.
- (b) Tax-qualified employee stock ownership plans.
- (c) Supplemental eligible account holders.
- (d) Other voting members who have subscription rights.
- (e) The savings association's community, its community and the general public, or the general public.

§ 192.325 Timing of offer to sell conversion shares.

(a) *In general.* A savings association may offer to sell its conversion shares after the appropriate Federal banking agency approves the conversion, clears the proxy statement, and declares the offering circular effective.

(b) *Timing.* The offer may commence at the same time the savings association starts the proxy solicitation of its members.

§ 192.330 Pricing of conversion shares.

(a) *In general.* A savings association must sell its conversion shares at a uniform price per share and at a total price that is equal to the estimated pro forma market value of its shares after the conversion.

(b) *Maximum price.* The maximum price must be no more than 15 percent above the midpoint of the estimated price range in the savings association's offering circular.

(c) *Minimum price.* The minimum price must be no more than 15 percent below the midpoint of the estimated price range in the savings association's offering circular.

(d) *Increase in price.* If the appropriate Federal banking agency permits, the savings association may increase the maximum price of conversion shares sold. The maximum price, as adjusted, must be no more than 15 percent above the maximum price computed under paragraph (b) of this section.

(e) *Price range.* The maximum price must be between \$5 and \$50 per share.

(f) *Inclusion in preliminary offering circular.* The savings association must in-

clude the estimated price in any preliminary offering circular.

§ 192.335 Procedures for the sale of conversion shares.

(a) *Distribution of order forms.* A savings association must distribute order forms to all eligible account holders, supplemental eligible account holders, and other voting members to enable them to subscribe for the conversion shares they are permitted under the plan of conversion. The savings association may either send the order forms with its offering circular or after the savings association distributes its offering circular.

(b) *Sale of shares.* A savings association may sell its conversion shares in a community offering, a public offering, or both. The savings association may begin the community offering, the public offering, or both at any time during the subscription offering or upon conclusion of the subscription offering.

(c) *Underwriting commissions and fees.* A savings association may pay underwriting commissions (including underwriting discounts). The appropriate Federal banking agency may object to the payment of unreasonable commissions. The savings association may reimburse an underwriter for accountable expenses in a subscription offering if the public offering is limited. If no public offering occurs, the savings association may pay an underwriter a consulting fee. The appropriate Federal banking agency may object to the payment of unreasonable consulting fees.

(d) *Sequence of order fulfillment.* If a savings association conducts the community offering, the public offering, or both at the same time as the subscription offering, the savings association must fill all subscription orders first.

(e) *Preparation of order form.* A savings association must prepare its order form in compliance with this part and Form OF.

§ 192.340 Prohibited sales practices.

(a) *Offers, sales, or purchases of conversion shares.* In connection with offers, sales, or purchases of conversion shares under this part, a savings association and its directors, officers, agents, or employees may not:

§ 192.345

12 CFR Ch. I (1-1-23 Edition)

(1) Employ any device, scheme, or artifice to defraud;

(2) Obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading; or

(3) Engage in any act, transaction, practice, or course of business that operates or would operate as a fraud or deceit upon a purchaser or seller.

(b) *Conversion.* During the conversion, no person may:

(1) Transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of subscription rights for the savings association's conversion shares or the underlying securities to the account of another;

(2) Make any offer, or any announcement of an offer, to purchase any of the savings association's conversion shares from anyone but the savings association; or

(3) Knowingly acquire more than the maximum purchase allowable under the savings association's plan of conversion.

(c) *Exceptions.* The restrictions in paragraphs (b)(1) and (2) of this section do not apply to offers for more than 10 percent of any class of conversion shares by:

(1) An underwriter or a selling group, acting on the savings association's behalf, that makes the offer with a view toward public resale; or

(2) One or more of the savings association's tax-qualified employee stock ownership plans so long as the plan or plans do not beneficially own more than 25 percent of any class of the savings association's equity securities in the aggregate.

(d) *Violations.* Any person found to have violated the restrictions in paragraph (a) or (b) of this section may become subject to an enforcement action, civil money penalties, criminal prosecution, or other legal action.

§ 192.345 Permissible forms of subscriber payment.

(a) *In general.* A subscriber may purchase conversion shares with cash, by a withdrawal from a savings account, or

a withdrawal from a certificate of deposit. If a subscriber purchases shares by a withdrawal from a certificate of deposit, the savings association may not assess a penalty for the withdrawal.

(b) *Prohibition.* A savings association may not extend credit to any person to purchase the savings association's conversion shares.

§ 192.350 Interest on payments for conversion shares.

(a) *In general.* A savings association must pay interest from the date the savings association receives a payment for conversion shares until the date the savings association completes or terminates the conversion. The savings association must pay interest at no less than its passbook rate for amounts paid in cash, check, or money order.

(b) *Interest on withdrawals from savings accounts.* If a subscriber withdraws money from a savings account to purchase conversion shares, the savings association must pay interest on the payment until the savings association completes or terminates the conversion as if the withdrawn amount remained in the account.

(c) *Interest on withdrawals from certificates of deposit.* If a depositor fails to maintain the applicable minimum balance requirement because he or she withdraws money from a certificate of deposit to purchase conversion shares, the savings association may cancel the certificate and pay interest at no less than its passbook rate on any remaining balance.

§ 192.355 Subscription rights for eligible account holders and supplemental eligible account holders.

(a) *Eligible account holders.* A savings association must give each eligible account holder subscription rights to purchase conversion shares in an amount equal to the greater of:

(1) The maximum purchase limitation established for the community offering or the public offering under § 192.395;

(2) One-tenth of one percent of the total stock offering; or

(3) Fifteen times the following number: The total number of conversion shares that the savings association will

Comptroller of the Currency, Treasury

§ 192.375

issue, multiplied by the following fraction. The numerator is the total qualifying deposit of the eligible account holder. The denominator is the total qualifying deposits of all eligible account holders. The savings association must round down the product of this multiplied fraction to the next whole number.

(b) *Supplemental eligible account holders.* The savings association must give subscription rights to purchase shares to each supplemental eligible account holder in the same amount as described in paragraph (a) of this section, except that the savings association must compute the fraction described in paragraph (a)(3) of this section as follows: The numerator is the total qualifying deposit of the supplemental eligible account holder. The denominator is the total qualifying deposits of all supplemental eligible account holders.

§ 192.360 Officers, directors, and associates as eligible account holders.

A savings association's officers, directors, and their associates may be eligible account holders. However, if an officer, director, or his or her associate receives subscription rights based on increased deposits in the year before the eligibility record date, the savings association must subordinate subscription rights for these deposits to subscription rights exercised by other eligible account holders.

§ 192.365 Purchase of conversion shares by other voting members.

(a) *In general.* A savings association must give rights to purchase its conversion shares in the conversion to voting members who are neither eligible account holders nor supplemental eligible account holders. The savings association must allocate rights to each voting member that are equal to the greater of:

- (1) The maximum purchase limitation established for the community offering and the public offering under § 192.395; or
- (2) One-tenth of one percent of the total stock offering.

(b) *Subordination of voting rights.* The savings association must subordinate the voting members' rights to the rights of eligible account holders, tax-

qualified employee stock ownership plans, and supplemental eligible account holders.

§ 192.370 Limits on aggregate purchases by officers, directors, and associates.

(a) *In general.* When a savings association converts, its officers, directors, and their associates may not purchase, in the aggregate, more than the following percentage of the savings association's total stock offering:

TABLE 1 TO § 192.370(a)

Institution size	Officer and director purchases (percent)
\$50,000,000 or less	35
\$50,000,001-100,000,000	34
\$100,000,001-150,000,000	33
\$150,000,001-200,000,000	32
\$200,000,001-250,000,000	31
\$250,000,001-300,000,000	30
\$300,000,001-350,000,000	29
\$350,000,001-400,000,000	28
\$400,000,001-450,000,000	27
\$450,000,001-500,000,000	26
Over \$500,000,000	25

(b) *Exception.* The purchase limitations in this section do not apply to shares held in tax-qualified employee stock benefit plans that are attributable to the savings association's officers, directors, and their associates.

§ 192.375 Allocation of oversubscribed conversion shares.

(a) *Eligible account holders.* If a savings association's conversion shares are oversubscribed by its eligible account holders, the savings association must allocate shares among the eligible account holders so that each, to the extent possible, may purchase 100 shares.

(b) *Supplemental eligible account holders.* If a savings association's conversion shares are oversubscribed by its supplemental eligible account holders, the savings association must allocate shares among the supplemental eligible account holders so that each, to the extent possible, may purchase 100 shares.

(c) *Eligible and supplemental eligible account holders.* If a person is an eligible account holder and a supplemental

§ 192.380

12 CFR Ch. I (1-1-23 Edition)

eligible account holder, the savings association must include the eligible account holder's allocation in determining the number of conversion shares that the savings association may allocate to the person as a supplemental eligible account holder.

(d) *Additional allocations.* For conversion shares that the savings association does not allocate under paragraphs (a) and (b) of this section, the savings association must allocate the shares among the eligible or supplemental eligible account holders equitably, based on the amounts of qualifying deposits. The savings association must describe this method of allocation in its plan of conversion.

(e) *Oversubscription.* If shares remain after the savings association has allocated shares as provided in paragraphs (a) and (b) of this section, and if the savings association's voting members oversubscribe, the savings association must allocate its conversion shares among those members equitably. The savings association must describe the method of allocation in its plan of conversion.

§ 192.380 Purchase of conversion shares by employee stock ownership plan.

(a) *In general.* A savings association's tax-qualified employee stock ownership plan may purchase up to 10 percent of the total offering of the savings association's conversion shares.

(b) *Revised stock valuation range.* If the appropriate Federal banking agency approves a revised stock valuation range as described in § 192.330(e), and the final conversion stock valuation range exceeds the former maximum stock offering range, a savings association may allocate conversion shares to its tax-qualified employee stock ownership plan, up to the 10 percent limit in paragraph (a) of this section.

(c) *Open market purchase.* If a savings association's tax-qualified employee stock ownership plan is not able to or chooses not to purchase stock in the offering, it may, with prior appropriate Federal banking agency approval and appropriate disclosure in the savings association's offering circular, purchase stock in the open market, or pur-

chase authorized but unissued conversion shares.

(d) *Charitable organizations.* A savings association may include stock contributed to a charitable organization in the conversion in the calculation of the total offering of conversion shares under paragraphs (a) and (b) of this section, unless the appropriate Federal banking agency objects on supervisory grounds.

§ 192.385 Purchase limitations.

(a) *In general.* A savings association may limit the number of shares that any person, group of associated persons, or persons otherwise acting in concert, may subscribe to up to five percent of the total stock sold.

(b) *Modification of purchase limit.* If a savings association sets a limit of five percent under paragraph (a) of this section, the savings association may modify that limit with appropriate Federal banking agency approval to provide that any person, group of associated persons, or persons otherwise acting in concert subscribing for five percent, may purchase between five and 10 percent as long as the aggregate amount that the subscribers purchase does not exceed 10 percent of the total stock offering.

(c) *Minimum purchase.* A savings association may require persons exercising subscription rights to purchase a minimum number of conversion shares. The minimum number of shares must equal the lesser of the number of shares obtained by a \$500 subscription or 25 shares.

(d) *Aggregation.* In setting purchase limitations under this section, a savings association may not aggregate conversion shares attributed to a person in the savings association's tax-qualified employee stock ownership plan with shares purchased directly by, or otherwise attributable to, that person.

§ 192.390 Community offering of conversion shares.

(a) *Purchase preference in subscription offering.* In a subscription offering, a savings association may give a purchase preference to eligible account holders, supplemental eligible account

Comptroller of the Currency, Treasury

§ 192.430

holders, and voting members residing in its local community.

(b) *Purchase preference in community offering.* In a community offering, a savings association must give a purchase preference to natural persons residing in its local community.

§ 192.395 Other conditions for community and public offerings.

A savings association must offer and sell its stock to achieve a widespread distribution of the stock. If a savings association offers shares in a community offering, a public offering, or both, it must first fill orders for its stock up to a maximum of two percent of the conversion stock on a basis that will promote a widespread distribution of stock. The savings association must allocate any remaining shares on an equal number of shares per order basis until it fills all orders.

COMPLETION OF THE OFFERING

§ 192.400 Time period for completion of sale of stock.

A savings association must complete all sales of its stock within 45 calendar days after the last day of the subscription period, unless the offering is extended under § 192.405.

§ 192.405 Extension of the offering period.

(a) *In general.* A savings association must submit a request in writing to the appropriate Federal banking agency for an extension of any offering period. The appropriate Federal banking agency will not grant any single extension of more than 90 calendar days.

(b) *Post-effective amendment to offering circular.* If the appropriate Federal banking agency grants a savings association's request for an extension of time, the savings association must provide a post-effective amendment to the offering circular under § 192.310 to each person who subscribed for or ordered stock. The amendment must indicate that the appropriate Federal banking agency extended the offering period and that each person who subscribed for or ordered stock may increase, decrease, or rescind their subscription or order within the time remaining in the

extension period.

COMPLETION OF THE CONVERSION

§ 192.420 Time period for completion of conversion.

In its plan of conversion, a savings association must set a date by which the conversion must be completed. This date must not be more than 24 months from the date that the savings association's members approve the plan of conversion. The date, once set, may not be extended by the savings association or by the appropriate Federal banking agency. The savings association must terminate the conversion if it is not completed by that date. The conversion is complete on the date that the savings association accepts the offers for its stock.

§ 192.425 Termination of conversion.

A conversion may be terminated by:

(a) A savings association's members failing to approve the conversion at its members' meeting;

(b) A savings association before its members' meeting; or

(c) A savings association after the members' meeting, but only if the appropriate Federal banking agency concurs.

§ 192.430 Charter amendments.

(a) *Conversion from Federally-chartered mutual savings association or savings bank to Federally-chartered stock savings association or savings bank.* If the savings association is a Federally-chartered mutual savings association or savings bank and it converts to a Federally-chartered stock savings association or savings bank, it must apply to the OCC to amend its charter and bylaws consistent with 12 CFR 5.22, as part of the savings association's application for conversion. The savings association may only include OCC pre-approved anti-takeover provisions in its amended charter and bylaws. See 12 CFR 5.22(g)(7).

(b) *Conversion from Federally-chartered mutual savings association or savings bank to State-chartered stock savings association or savings bank.* If the savings association is a Federally-chartered mutual savings association or savings

§ 192.435

bank and is converting to a State-chartered stock savings association under this part, the savings association must surrender its charter to the OCC for cancellation promptly after the State issues its new State stock charter. The savings association must promptly file a copy of its new State stock charter with the FDIC.

(c) *Conversion from State-chartered mutual savings association or savings bank to Federally State-chartered stock savings association or savings bank.* If the savings association is a State-chartered mutual savings association or savings bank, and is converting to a Federally chartered stock savings association or savings bank, it must apply to the OCC for a new charter and bylaws consistent with 12 CFR 5.22. The savings association may only include OCC pre-approved anti-takeover provisions in its charter and bylaws. See 12 CFR 5.22(g)(7).

(d) *Priority of accounts.* In any conversion described in this section that involves a mutual holding company, the charter of each resulting subsidiary savings association of the holding company must contain the following provision:

In any situation in which the priority of the accounts of the association is in controversy, all such accounts must, to the extent of their withdrawable value, be debts of the association having the same priority as the claims of general creditors of the association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association.

(e) *Liquidation account.* The savings association's new or amended charter must require the savings association to establish and maintain a liquidation account for eligible and supplemental eligible account holders under § 192.450.

§ 192.435 Corporate existence after conversion.

A savings association's corporate existence will continue following its conversion, unless it converts to a State-chartered stock savings association and State law prescribes otherwise.

12 CFR Ch. I (1-1-23 Edition)

§ 192.440 Stockholder voting rights after conversion.

A savings association must provide its stockholders with exclusive voting rights, except as provided in § 192.445(c).

§ 192.445 Savings account holder's account after conversion.

(a) *In general.* The savings association must provide each savings account holder, without payment, a withdrawable savings account or accounts in the same amount and under the same terms and conditions as their accounts before the conversion.

(b) *Liquidation account.* The savings association must provide a liquidation account for each eligible and supplemental eligible account holder under § 192.450.

(c) *Voting rights.* If the savings association is State-chartered and State law requires the savings association to provide voting rights to savings account holders or borrowers, the charter must:

(1) Limit these voting rights to the minimum required by State law; and

(2) Require the savings association to solicit proxies from the savings account holders and borrowers in the same manner that the savings association solicits proxies from its stockholders.

LIQUIDATION ACCOUNT

§ 192.450 Liquidation accounts.

(a) *In general.* A liquidation account represents the potential interest of eligible account holders and supplemental eligible account holders in the savings association's net worth at the time of conversion. A savings association must maintain a sub-account to reflect the interest of each account holder.

(b) *Distribution of liquidation.* Before a savings association may provide a liquidation distribution to common stockholders, it must give a liquidation distribution to those eligible account holders and supplemental eligible account holders who hold savings accounts from the time of conversion until liquidation.

(c) *Recording of liquidation account in financial statements.* A savings association may not record the liquidation account in its financial statements. The

savings association must disclose the liquidation account in the footnotes to the savings association's financial statements.

§ 192.455 Initial balance of liquidation account.

The initial balance of the liquidation account is the savings association's net worth in the statement of financial condition included in the final offering circular.

§ 192.460 Initial balance of liquidation sub-account.

(a) *General rule.* (1) A savings association must calculate the initial liquidation sub-account balance of each eligible and supplemental eligible account holder at the time of the conversion.

(2) The initial liquidation sub-account balance for a savings account held by an eligible account holder, for a savings account not held by the eligible account holder on the supplemental eligibility record date, is calculated by multiplying the initial liquidation account balance by the following fraction: The numerator is the qualifying deposit in the savings account on the eligibility record date and the denominator is the calculation in paragraph (a)(5) of this section.

(3) The initial liquidation sub-account balance for a savings account held by a supplemental eligible account holder, for a savings account not held by the supplemental eligible account holder on the eligibility record date, is calculated by multiplying the initial liquidation account balance by the following fraction: The numerator is the qualifying deposit in the savings account on the supplemental eligibility record date and the denominator is the calculation in paragraph (a)(5) of this section.

(4) For a savings account held on both the eligibility record date and the supplemental eligibility record date, the amount of the qualifying deposit for calculating the initial liquidation sub-account is the higher account balance of the savings account on either the eligibility record date or the supplemental eligibility record date. The initial liquidation sub-account balance is calculated by multiplying the liquidation account balance by the fol-

lowing fraction: The numerator is the higher amount of the qualifying deposit in the savings account on either the eligibility record date or the supplemental eligibility record date and the denominator is the calculation in paragraph (a)(5) of this section.

(5) The denominator for calculating the initial liquidation sub-account balance of each eligible and supplemental eligible account holder is the sum of the numerator calculations in paragraphs (a)(2) through (4) of this section.

(b) *Balance increases and decreases.* A savings association must not increase the initial liquidation and sub-account balances. It must decrease the initial liquidation account and the sub-account balances under § 192.470 as depositors reduce or close their savings accounts.

§ 192.465 Retention of voting rights based on liquidation sub-accounts.

Eligible account holders or supplemental eligible account holders do not retain any voting rights based on their liquidation sub-accounts.

§ 192.470 Required adjustments to liquidation sub-accounts.

(a) *Reductions.* (1) A savings association must reduce the balance of an eligible account holder's or supplemental eligible account holder's liquidation sub-account if the deposit balance in the account holder's savings account at the close of business on any annual closing date, which for purposes of this section is the savings association's fiscal year end, falls below the lesser of:

(i) The deposit balance in the account holder's savings account as of the relevant eligibility record date; or

(ii) The deposit balance in the account holder's savings account as of its lowest balance as of any subsequent annual closing date.

(2) The reduction in the account holder's liquidation sub-account from its balance at the time of conversion must be proportionate to the reduction in the account holder's savings account from its balance at the time of conversion.

(b) *Prohibition on increases.* If a savings association reduces the balance of a liquidation sub-account, it may not

§ 192.475

subsequently increase it if the deposit balance increases.

(c) *Liquidation account adjustments.* A savings association is not required to adjust the liquidation account and sub-account balances at each annual closing date if the savings association maintains sufficient records to make the computations if a liquidation subsequently occurs.

(d) *Maintenance of liquidation sub-account.* A savings association must maintain the liquidation sub-account for each account holder as long as the account holder maintains an account with the same social security number.

(e) *Complete liquidation.* If there is a complete liquidation, the savings association must provide the account holder of a liquidation sub-account with a liquidation distribution in the amount of the account holder's remaining liquidation sub-account balance.

§ 192.475 Definition of liquidation.

(a) *In general.* A liquidation is a sale of a savings association's assets and settlement of its liabilities with the intent to cease operations and close. Upon liquidation, a savings association must return its charter to the governmental agency that issued it. The government agency must cancel the savings association's charter.

(b) *Other transactions.* A merger, consolidation, or similar combination or transaction with another depository institution, is not a liquidation. If a savings association is involved in such a transaction, the surviving institution must assume the liquidation account.

§ 192.480 Effect of liquidation account on net worth.

The liquidation account does not affect a savings association's net worth.

§ 192.485 Required liquidation account provision in new Federal charter.

If a savings association converts to Federal stock form, it must include the following provision in its new charter: "Liquidation Account. Under appropriate Federal banking agency regulations, the association must establish and maintain a liquidation account for the benefit of its savings account holders as of _____. If the association undergoes a complete liquidation, it must

12 CFR Ch. I (1-1-23 Edition)

comply with appropriate Federal banking agency regulations with respect to the amount and priorities on liquidation of each of the savings account holder's interests in the liquidation account. A savings account holder's interest in the liquidation account does not entitle the savings account holder to any voting rights."

POST-CONVERSION

§ 192.500 Permissible management stock benefit plans after conversion.

(a) *In general.* During the 12 months after its conversion, a savings association may implement a stock option plan (Option Plan), an employee stock ownership plan or other tax-qualified employee stock benefit plan (collectively, ESOP), and a management recognition plan (MRP), provided that the savings association meets all of the following requirements:

(1) The savings association discloses the plans in its proxy statement and offering circular and indicates in its offering circular that there will be a separate shareholder vote on the Option Plan and the MRP at least six months after the conversion. No shareholder vote is required to implement the ESOP. The savings association's ESOP must be tax-qualified.

(2) The savings association's Option Plan does not encompass more than 10 percent of the number of shares that the savings association issued in the conversion.

(3)(i) The savings association's ESOP and MRP do not encompass, in the aggregate, more than 10 percent of the number of shares that the savings association issued in the conversion. If the savings association has tangible capital of 10 percent or more following the conversion, the appropriate Federal banking agency may permit the ESOP and MRP to encompass, in the aggregate, up to 12 percent of the number of shares issued in the conversion; and

(ii) The savings association's MRP does not encompass more than three percent of the number of shares that the savings association issued in the conversion. If the savings association has tangible capital of 10 percent or more after the conversion, the appropriate Federal banking agency may

permit the MRP to encompass up to four percent of the number of shares that the savings association issued in the conversion.

(4) No individual receives more than 25 percent of the shares under any plan.

(5) The savings association's directors who are not officers of the savings association do not receive more than five percent of the shares of the MRP or Option Plan individually, or 30 percent of any such plan in the aggregate.

(6) The savings association's shareholders approve each of the Option Plan and the MRP by a majority of the total votes eligible to be cast at a duly called meeting before the savings association establishes or implements the plan. The savings association may not hold this meeting until six months after its conversion.

(7) When the savings association distributes proxies or related material to shareholders in connection with the vote on a plan, the savings association states that the plan complies with the appropriate Federal banking agency's regulations and that the appropriate Federal banking agency does not endorse or approve the plan in any way. The savings association may not make any written or oral representations to the contrary.

(8) The savings association does not grant stock options at less than the market price at the time of grant.

(9) The savings association does not fund the Option Plan or the MRP at the time of the conversion.

(10) The savings association's plan does not begin to vest earlier than one year after shareholders approve the plan, and does not vest at a rate exceeding 20 percent per year.

(11) The savings association's plan permits accelerated vesting only for disability or death, or if the savings association undergoes a change of control.

(12) The savings association's plan provides that its executive officers or directors must exercise or forfeit their options in the event the institution becomes critically undercapitalized (as defined in 12 CFR 6.4 or 324.403, as applicable), is subject to appropriate Federal banking agency enforcement action, or receives a capital directive

under 12 CFR part 6, subpart B or 12 CFR 308.201, as applicable.

(13) The savings association files a copy of the proposed Option Plan or MRP with the appropriate Federal banking agency and certifies to such agency that the plan approved by the shareholders is the same plan that the savings association filed with, and disclosed in, the proxy materials distributed to shareholders in connection with the vote on the plan.

(14) The savings association files the plan and the certification with the appropriate Federal banking agency within five calendar days after its shareholders approve the plan.

(b) *Stock splits or other adjustments.* The savings association may provide dividend equivalent rights or dividend adjustment rights to allow for stock splits or other adjustments to its stock in the ESOP, MRP, and Option Plan.

(c) *Plans implemented more than 12 months after conversion.* The restrictions in paragraph (a) of this section do not apply to plans implemented more than 12 months after the conversion, provided that materials pertaining to any shareholder vote regarding such plans are not distributed within the 12 months after the conversion. If a plan adopted in conformity with paragraph (a) of this section is amended more than 12 months following the conversion, shareholders must ratify any material deviations to the requirements in paragraph (a).

§ 192.505 Restrictions on the trading of shares by directors, officers, and associates.

(a) *Sales restriction.* Directors and officers who purchase conversion shares may not sell the shares for one year after the date of purchase, except that in the event of the death of the officer or director, the successor in interest may sell the shares.

(b) *Notice of sales restriction on stock certificate.* The savings association must include notice of the restriction described in paragraph (a) of this section on each certificate of stock that a director or officer purchases during the conversion or receives in connection with a stock dividend, stock split, or otherwise with respect to such restricted shares.

§ 192.510

12 CFR Ch. I (1–1–23 Edition)

(c) *Stock purchase restrictions.* For three years after the conversion, the savings association's officers, directors, and their associates may purchase the savings association's stock only from a broker or dealer registered with the Securities and Exchange Commission. However, the savings association's officers, directors, and their associates may engage in a negotiated transaction involving more than one percent of the savings association's outstanding stock, and may purchase stock through any of the savings association's management or employee stock benefit plans.

(d) *Communication of restrictions with transfer agent.* The savings association must instruct its stock transfer agent about the transfer restrictions in this section.

§ 192.510 Repurchase of shares after conversion.

(a) *Repurchases during first year after conversion.* A savings association may not repurchase its shares in the first year after the conversion except:

(1) In extraordinary circumstances, a savings association may make open market repurchases of up to five percent of its outstanding stock in the first year after the conversion if the savings association files a notice under § 192.515(a) and the appropriate Federal banking agency does not disapprove the repurchase. The appropriate Federal banking agency will not approve such repurchases unless the repurchase meets the standards in § 192.515(c), and the repurchase is consistent with paragraph (c) of this section.

(2) A savings association may repurchase qualifying shares of a director or conduct an appropriate Federal banking agency-approved repurchase pursuant to an offer made to all shareholders of the savings association.

(3) Repurchases to fund management recognition plans that have been ratified by shareholders do not count toward the repurchase limitations in this section. Repurchases in the first year to fund such plans require prior written notification to the appropriate Federal banking agency.

(4) Purchases to fund tax qualified employee stock benefit plans do not

count toward the repurchase limitations in this section.

(b) *Repurchases following first year after conversion.* After the first year, a savings association may repurchase its shares, subject to all other applicable regulatory and supervisory restrictions and paragraph (c) of this section.

(c) *Restrictions on all repurchases.* All stock repurchases are subject to the following restrictions.

(1) A savings association may not repurchase its shares if the repurchase will reduce the savings association's regulatory capital below the amount required for its liquidation account under § 192.450. The savings association must comply with the capital distribution requirements at 12 CFR 5.55.

(2) The restrictions on share repurchases apply to a charitable organization under § 192.550. A savings association must aggregate purchases of shares by the charitable organization with the savings association's repurchases.

§ 192.515 Information to be filed with Federal banking agency prior to repurchase of shares.

(a) *Notice requirement.* To repurchase stock in the first year following conversion, other than repurchases under § 192.510(a)(3) or (4), a savings association must file a written notice with the appropriate OCC licensing office if Federally chartered, and with the appropriate FDIC region if State-chartered. The savings association must provide the following information:

(1) The proposed repurchase program;

(2) The effect of the repurchases on the savings association's regulatory capital; and

(3) The purpose of the repurchases and, if applicable, an explanation of the extraordinary circumstances necessitating the repurchases.

(b) *Filing of notice.* A Federal savings association must file its notice with the appropriate OCC licensing office, and a State savings association must file its notice with the appropriate regional director of the FDIC, at least 10 calendar days before the savings association begins its repurchase program.

(c) *Agency review.* A savings association may not repurchase its shares if

Comptroller of the Currency, Treasury

§ 192.525

the appropriate Federal banking agency objects to the repurchase program. The appropriate Federal banking agency will not object to a repurchase program if:

(1) The repurchase program will not adversely affect the savings association's financial condition;

(2) The savings association submits sufficient information to evaluate the proposed repurchases;

(3) The savings association demonstrates extraordinary circumstances and a compelling and valid business purpose for the share repurchases; and

(4) The repurchase program would not be contrary to other applicable regulations.

§ 192.520 Declaring and paying dividends after the conversion.

A savings association may declare or pay a dividend on its shares after the conversion if:

(a) The dividend will not reduce the savings association's regulatory capital below the amount required for the liquidation account under § 192.450;

(b) The savings association complies with all capital requirements under 12 CFR part 3 after it declares or pays dividends;

(c) The savings association complies with the capital distribution requirements under 12 CFR 5.55; and

(d) The savings association does not return any capital, other than ordinary dividends, to purchasers during the term of the business plan submitted with the conversion.

§ 192.525 Restrictions on acquisition of shares after conversion.

(a) *Prior agency approval.* For three years after conversion, no person may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than 10 percent of any class of the savings association's equity securities without the appropriate Federal banking agency's prior written approval. If a person violates this prohibition, the savings association may not permit the person to vote shares in excess of 10 percent, and may not count the shares in excess of 10 percent in any shareholder vote.

(b) *Beneficial ownership.* A person acquires beneficial ownership of more

than 10 percent of a class of shares when he or she holds any combination of the savings association's stock or revocable or irrevocable proxies under circumstances that give rise to a conclusive control determination or rebuttable control determination under 12 CFR 5.50. The appropriate Federal banking agency will presume that a person has acquired shares if the acquiror entered into a binding written agreement for the transfer of shares. For purposes of this section, an offer is made when it is communicated. An offer does not include non-binding expressions of understanding or letters of intent regarding the terms of a potential acquisition.

(c) *Exceptions.* Notwithstanding the restrictions in this section:

(1) Paragraphs (a) and (b) of this section do not apply to any offer with a view toward public resale made exclusively to the savings association, to the underwriters, or to a selling group acting on the savings association's behalf.

(2) Unless the appropriate Federal banking agency objects in writing, any person may offer or announce an offer to acquire up to one percent of any class of shares. In computing the one percent limit, the person must include all of his or her acquisitions of the same class of shares during the prior 12 months.

(3) A corporation whose ownership is, or will be, substantially the same as the savings association's ownership may acquire or offer to acquire more than 10 percent of the savings association's common stock, if it makes the offer or acquisition more than one year after the savings association's conversion.

(4) One or more of the savings association's tax-qualified employee stock benefit plans may acquire the savings association's shares, if the plan or plans do not beneficially own more than 25 percent of any class of the savings association's shares in the aggregate.

(5) An acquiror does not have to file a separate application to obtain the appropriate Federal banking agency's approval under paragraph (a) of this section if the acquiror files an application

§ 192.530

under 12 CFR 5.50 that specifically addresses the criteria listed under paragraph (d) of this section and the savings association does not oppose the proposed acquisition.

(d) *Factors for agency denial.* The appropriate Federal banking agency may deny an application under paragraph (a) of this section if the proposed acquisition:

- (1) Is contrary to the purposes of this part;
- (2) Is manipulative or deceptive;
- (3) Subverts the fairness of the conversion;
- (4) Is likely to injure the savings association;
- (5) Is inconsistent with the savings association's plan to meet the credit and lending needs of its proposed market area;
- (6) Otherwise violates laws or regulations; or
- (7) Does not prudently deploy the savings association's conversion proceeds.

§ 192.530 Other post-conversion requirements.

After a savings association converts, it must:

(a) Promptly register its shares under the Securities Exchange Act of 1934 (15 U.S.C. 78a-78jj, as amended). The savings association may not deregister the shares for three years.

(b) Encourage and assist a market maker to establish and to maintain a market for its shares. A market maker for a security is a dealer who:

- (1) Regularly publishes bona fide competitive bid and offer quotations for the security in a recognized inter-dealer quotation system;
- (2) Furnishes bona fide competitive bid and offer quotations for the security on request; or
- (3) May effect transactions for the security in reasonable quantities at quoted prices with other brokers or dealers.

(c) Use its best efforts to list its shares on a national or regional securities exchange or on the National Association of Securities Dealers Automated Quotation system.

(d) File all post-conversion reports that the appropriate Federal banking agency requires.

12 CFR Ch. I (1-1-23 Edition)

CONTRIBUTIONS TO CHARITABLE ORGANIZATIONS

§ 192.550 Donating conversion shares or conversion proceeds to a charitable organization.

A savings association may contribute some of its conversion shares or proceeds to a charitable organization if:

- (a) The savings association's plan of conversion provides for the proposed contribution;
- (b) The savings association's members approve the proposed contribution; and
- (c) The IRS either has approved, or approves within two years after formation, the charitable organization as a tax-exempt charitable organization under the Internal Revenue Code.

§ 192.555 Member approval of charitable contributions.

At the meeting to consider the conversion, a savings association's members must separately approve, by a majority of the total eligible votes, a charitable contribution of conversion shares or proceeds. If the savings association is in mutual holding company form and adding a charitable contribution as part of a second step stock conversion, the savings association must also have its minority shareholders separately approve the charitable contribution by a majority of their total eligible votes.

§ 192.560 Limitations on charitable contributions.

A savings association may contribute a reasonable amount of conversion shares or proceeds to a charitable organization if such contribution will not exceed limits for charitable deductions under the Internal Revenue Code and the appropriate Federal banking agency does not object on supervisory grounds. If the savings association is well-capitalized, the appropriate Federal banking agency generally will not object if the savings association contributes an aggregate amount of eight percent or less of the conversion shares or proceeds.

§ 192.565 Contents of organizational documents of charitable organization.

The charitable organization's charter (or trust agreement) and gift instrument must provide that:

(a) The charitable organization's primary purpose is to serve and make grants in the savings association's local community;

(b) As long as the charitable organization controls shares, it must vote those shares in the same ratio as all other shares voted on each proposal considered by the savings association's shareholders;

(c) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for an independent director (or trustee) from the savings association's local community. This director may not be an officer, director, or employee of the savings association or of an affiliate of the savings association, and should have experience with local community charitable organizations and grant making; and

(d) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for a director from the savings association's board of directors or the board of directors of an acquiror or resulting institution in the event of a merger or acquisition of the savings association.

§ 192.570 Conflicts of interest among directors.

(a) *In general.* A person is subject to 12 CFR 163.200 if that person:

(1) Is a director, officer, or employee of the savings association; has the power to direct the savings association's management or policies; or otherwise owes a fiduciary duty to the savings association (for example, holding company directors); and

(2) Will serve as an officer, director, or employee of the charitable organization. *See* Form AC for further information on operating plans and conflict of interest plans.

(b) *Identification and recusal of directors.* Before the savings association's board of directors may adopt a plan of conversion that includes a charitable

organization, the savings association must identify its directors that will serve on the charitable organization's board. These directors may not participate in the board's discussions concerning contributions to the charitable organization, and may not vote on the matter.

§ 192.575 Other requirements for charitable organizations.

(a) *Charter and gift instrument requirements.* The charitable organization's charter (or trust agreement) and the gift instrument for the contribution must provide that:

(1) The appropriate Federal banking agency may examine the charitable organization at the charitable organization's expense;

(2) The charitable organization must comply with all supervisory directives that the appropriate Federal banking agency imposes;

(3) The charitable organization must operate according to written policies adopted by its board of directors (or board of trustees), including a conflict of interest policy;

(4) The charitable organization must not engage in self-dealing; and

(5) The charitable organization must comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code.

(b) *Stock certificate requirement.* The savings association must include the following legend in the stock certificates of shares that the savings association contributes to the charitable organization or that the charitable organization otherwise acquires: "The board of directors must consider the shares that this stock certificate represents as voted in the same ratio as all other shares voted on each proposal considered by the shareholders, as long as the shares are controlled by the charitable organization."

(c) *Voting ratio.* As long as the charitable organization controls shares, the savings association must consider those shares as voted in the same ratio as all of the shares voted on each proposal considered by the savings association's shareholders.

§ 192.600

12 CFR Ch. I (1-1-23 Edition)

(d) *Filing requirement.* After the savings association completes its stock offering, it must submit copies of the following documents to the appropriate OCC licensing office if it is a Federal savings association or with the appropriate FDIC region if it is a State savings association:

- (1) The charitable organization's charter and bylaws (or trust agreement);
- (2) The charitable organization's operating plan (within six months after the savings association's stock offering);
- (3) The charitable organization's conflict of interest policy; and
- (4) The gift instrument for the contributions of either stock or cash to the charitable organization.

Subpart B—Voluntary Supervisory Conversions

§ 192.600 Voluntary supervisory conversions.

(a) *In general.* A savings association must comply with this subpart and part 16 to engage in a voluntary supervisory conversion. This subpart applies to all voluntary supervisory conversions under sections 5(i)(1), (i)(2), and (p) of HOLA, 12 U.S.C. 1464(i)(1), (i)(2), and (p).

(b) *Application of subpart A.* Subpart A of this part also applies to a voluntary supervisory conversion, unless a requirement is clearly inapplicable.

§ 192.605 Conducting a voluntary supervisory conversion.

A savings association may conduct a voluntary supervisory conversion through one of the following methods:

- (a) A savings association may sell its shares or the shares of a holding company to the public under the requirements of subpart A of this part.
- (b) A savings association may convert to stock form by merging into an interim Federal- or State-chartered stock association.
- (c) A savings association may sell its shares directly to an acquiror, who may be a person, company, depository institution, or depository institution holding company.
- (d) A savings association may merge or consolidate with an existing or

newly created depository institution. The merger or consolidation must be authorized by, and is subject to, other applicable laws and regulations.

§ 192.610 Member rights in a voluntary supervisory conversion.

Savings association members do not have the right to approve or participate in a voluntary supervisory conversion, and will not have any legal or beneficial ownership interests in the converted association, unless the appropriate Federal banking agency provides otherwise. Savings association members may have interests in a liquidation account, if one is established.

ELIGIBILITY

§ 192.625 Eligibility for a voluntary supervisory conversion.

(a) *Eligibility.* An insured savings association may be eligible to convert under this subpart B if:

- (1) The savings association is significantly undercapitalized (or undercapitalized and a standard conversion that would make the savings association adequately capitalized is not feasible) and the savings association will be a viable entity following the conversion;
- (2) Severe financial conditions threaten the savings association's stability and a conversion is likely to improve its financial condition;
- (3) The FDIC will assist the savings association under section 13 of the Federal Deposit Insurance Act, 12 U.S.C. 1823; or
- (4) The savings association is in receivership and a conversion will assist the savings association.

(b) *Requirements for viability after conversion.* The savings association will be a viable entity following the conversion if it satisfies all of the following:

- (1) The savings association will be adequately capitalized as a result of the conversion;
- (2) The savings association, its proposed conversion, and its acquiror(s) comply with applicable supervisory policies;
- (3) The transaction is in the savings association's best interest, and the best interest of the Deposit Insurance Fund and the public; and

Comptroller of the Currency, Treasury

§ 192.660

(4) The transaction will not injure or be detrimental to the savings association, the Deposit Insurance Fund, or the public interest.

VOLUNTARY SUPERVISORY CONVERSION APPLICATION

§ 192.630 Eligibility of State-chartered savings bank for voluntary supervisory conversion.

§ 192.660 Contents of voluntary supervisory conversion application.

A State-chartered savings bank may be eligible to convert to a Federal stock savings bank under this subpart if:

A savings association must include all of the following information and documents in a voluntary supervisory conversion application to the appropriate OCC licensing office if it is a Federal savings association and to the appropriate FDIC region if it is a State savings association under this subpart:

- (a) The FDIC certifies under section 5(o)(2)(C) of the HOLA that severe financial conditions threaten the savings bank's stability and that the voluntary supervisory conversion is likely to improve its financial condition; or
- (b) The savings bank meets the following conditions:

(a) *Eligibility.* (1) Evidence establishing that the savings association meets the eligibility requirements under § 192.625 or § 192.630.

- (1) The savings bank's liabilities exceed its assets, as calculated under generally accepted accounting principles, assuming the savings bank is a going concern; and
- (2) The savings bank will issue a sufficient amount of permanent capital stock to meet its applicable FDIC capital requirement immediately upon completion of the conversion, or the FDIC determines that the savings bank will achieve an acceptable capital level within an acceptable time period.

(2) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences of the conversion, or an IRS ruling indicating that the transaction qualifies as a tax-free reorganization.

- (3) The savings bank will issue a sufficient amount of permanent capital stock to meet its applicable FDIC capital requirement immediately upon completion of the conversion, or the FDIC determines that the savings bank will achieve an acceptable capital level within an acceptable time period.

(3) An opinion of independent counsel indicating that applicable State law authorizes the voluntary supervisory conversion, if the conversion involves a State-chartered savings association converting to State stock form.

- (b) *Plan of conversion.* A plan of voluntary supervisory conversion that complies with § 192.650.
- (c) *Business plan.* A business plan that complies with § 192.105, when required by the appropriate Federal banking agency.
- (d) *Financial data.* (1) The savings association's most recent audited financial statements and Consolidated Reports of Condition and Income or Call Report, as appropriate. The savings association must explain how its current capital levels make the savings association eligible to engage in a voluntary supervisory conversion under § 192.625 or § 192.630.
- (2) A description of the savings association's estimated conversion expenses.
- (3) Evidence supporting the value of any non-cash asset contributions. Appraisals must be acceptable to the appropriate Federal banking agency and the non-cash assets must meet all other appropriate Federal banking agency policy guidelines.

(b) *Plan of conversion.* A plan of voluntary supervisory conversion that complies with § 192.650.

PLAN OF SUPERVISORY CONVERSION

§ 192.650 Contents of plan of voluntary supervisory conversion.

A majority of the board of directors of the savings association must adopt a plan of voluntary supervisory conversion. The savings association must include all of the following information in its plan of voluntary supervisory conversion.

(c) *Business plan.* A business plan that complies with § 192.105, when required by the appropriate Federal banking agency.

- (a) The savings association's name and address.
- (b) A complete description of the proposed voluntary supervisory conversion transaction that also describes plans for any liquidation account.
- (c) Certified copies of all resolutions relating to the conversion adopted by the board of directors of the savings association.

§ 192.670

12 CFR Ch. I (1-1-23 Edition)

(4) Pro forma financial statements that reflect the effects of the transaction. The savings association must identify its tangible, core, and risk-based capital levels and show the adjustments necessary to compute the capital levels. The savings association must prepare its pro forma statements in conformance with the appropriate Federal banking agency's regulations and the applicable accounting requirements.

(5) A statement describing the aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase.

(e) *Proposed documents.* (1) The savings association's proposed charter and bylaws.

(2) The savings association's proposed stock certificate form.

(3) Any securities offering circular and other securities disclosure materials to be used in connection with the proposed voluntary supervisory conversion.

(f) *Agreements.* (1) A copy of any agreements between the savings association and proposed purchasers.

(2) A copy and description of all existing and proposed employment contracts. The savings association must describe the term, salary, and severance provisions of the contract, the identity and background of the officer or employee to be employed, and the amount of any conversion shares to be purchased by the officer or employee or his or her affiliates or associates.

(g) *Related filings and applications.* (1) All filings required under the securities offering rules of 12 CFR parts 16 and 192.

(2) Any required Change in Bank Control Act notice and rebuttal of control submissions under 12 U.S.C. 1817(j) and 12 CFR 5.50, or copies of any Holding Company Act applications, including prior-conduct certifications listed under the appropriate Federal banking agency's regulatory guidance.

(3) A subordinated debt application, if applicable.

(4) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of any application for FDIC insurance of accounts, if applicable.

(5) A statement describing any other applications required under Federal or State banking laws for all transactions related to the conversion, copies of all dispositive documents issued by regulatory authorities relating to the applications, and, if requested by the appropriate Federal banking agency, copies of the applications and related documents.

(h) *Other information.* (1) A statement indicating the role each director, officer, and affiliate of the savings association or associate of the director or officer will have after the conversion.

(2) Any additional information requested by the OCC, as authorized by law.

(i) *Waiver request.* A description of any of the features of the savings association's application that do not conform to the requirements of this subpart, including any request for waiver of these requirements.

APPROPRIATE FEDERAL BANKING AGENCY REVIEW OF THE VOLUNTARY SUPERVISORY CONVERSION APPLICATION

§ 192.670 Approval of voluntary supervisory conversion application.

The appropriate Federal banking agency will generally approve a savings association's application to engage in a voluntary supervisory conversion unless it determines:

(a) The savings association does not meet the eligibility requirements for a voluntary supervisory conversion under § 192.625 or § 192.630 or because the proceeds from the sale of conversion stock, less the expenses of the conversion, would be insufficient to satisfy any applicable viability requirement;

(b) The transaction is detrimental to or would cause potential injury to the savings association or the Deposit Insurance Fund or is contrary to the public interest;

(c) The savings association or its acquiror, or the controlling parties or directors and officers of the savings association or its acquiror, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion; or

Comptroller of the Currency, Treasury

§ 192.690

(d) The savings association fails to justify an employment contract incidental to the conversion, or the employment contract will be an unsafe or unsound practice or represent a sale of control. In a voluntary supervisory conversion, the appropriate Federal banking agency generally will not approve employment contracts of more than one year for existing management.

§ 192.675 Conditions imposed upon approval of voluntary supervisory conversion application.

(a) *Required condition.* The appropriate Federal banking agency will condition approval of a voluntary supervisory conversion application on all of the following.

(1) The savings association must complete the conversion stock sale within three months after the appropriate Federal banking agency approves the application. The appropriate Federal banking agency may grant an extension for good cause.

(2) The savings association must comply with all filing requirements of this part, and 12 CFR part 16.

(3) The savings association must submit an opinion of independent legal counsel indicating that the sale of its shares complies with all applicable State securities law requirements.

(4) The savings association must comply with all applicable laws, rules, and regulations.

(5) The savings association must satisfy any other requirements or conditions the appropriate Federal banking agency may impose.

(b) *Discretionary conditions.* The appropriate Federal banking agency may condition approval of a voluntary supervisory application for conversion on either of the following:

(1) The savings association must satisfy any conditions and restrictions the appropriate Federal banking agency imposes to prevent unsafe or unsound practices, to protect the Deposit Insurance Fund and the public interest, and to prevent potential injury or detriment to the savings association before and after the conversion. The appropriate Federal banking agency may impose these conditions and restrictions on the savings association (before and after the conversion) or, as appropriate, the savings association's acquiror, controlling parties, or its directors and officers; or

(2) The savings association must infuse a larger amount of capital, if necessary, for safety and soundness reasons.

OFFERS AND SALES OF STOCK

§ 192.680 Offer and sale of shares in a voluntary supervisory conversion.

If a savings association converts under this subpart, it must offer and sell its shares in accordance with the applicable requirements of 12 CFR parts 16 and 192.

POST-CONVERSION

§ 192.690 Restrictions on acquisition of additional shares after voluntary supervisory conversion.

For three years after the completion of a voluntary supervisory conversion, neither the savings association nor its controlling shareholder(s) may acquire shares from minority shareholders without the appropriate Federal banking agency's prior approval.

PARTS 193–199 [RESERVED]